2000 CarswellOnt 3243
Ontario Superior Court of Justice

Manitouwadge General Hospital v. Kudlak

2000 CarswellOnt 3243, [2000] O.T.C. 670, 99 A.C.W.S. (3d) 1054

Manitouwadge General Hospital, Landlord/Applicant and Dr. Robert Michael Kudlak, Tenant/Respondent

Kozak J.

Heard: August 1, 2000
Judgment: September 18, 2000
Docket: Thunder Bay 00-0467

Counsel: *W. R. Middleton*, for Landlord/Applicant.
Christopher D. J. Hacio, for Tenant/Respondent.

Subject: Contracts; Public; Property

Headnote

Landlord and tenant --- Overholding — Right to recovery of possession

Ministry of health formed agreement with northern group comprised of three doctors — Agreement specified group would rent space from Manitouwadge hospital for three years — One doctor quit and was replaced by defendant doctor K — Doctor K agreed to three year employment term — New draft of original agreement between northern group and minister replacing doctor L with Doctor K was not signed — Doctor K purchased computer which he placed at his office workstation — Other doctor maintained that computer should be shared equally and kept at his secretary's workstation — Doctor K took computer home — Doctor K was eliminated from group practice and was told by hospital to vacate clinic — Hospital brought application for declaration that doctor was overholding tenant — Application dismissed — Doctor K was not overholding tenant and held three year lease — Evidence did not support conclusion that northern group by itself was tenant — Unlikely that doctor K would have relocated to clinic with month-to-month lease — Doctor K had three-year employment agreement with northern group and with ministry — Forgivable loan from hospital to doctor K for moving expenses was contingent upon three year's service — Condition that doctor K remain part of northern group and have admitting privileges at hospital was essential term of lease agreement — Doctor K had not been officially removed from the group, and admitting privileges were under review — Doctor K would suffer substantial and irreparable harm if tenancy was revoked.

Landlord and tenant --- Term of lease — Termination — General principles

Minister of health formed agreement with northern group comprised of three doctors — Agreement specified group would rent space from Manitouwadge hospital for three years — One doctor quit and was replaced by defendant doctor K — Doctor K agreed to three-year employment term — New draft of original agreement between northern group and minister replacing doctor L with Doctor K was not signed — Doctor K purchased computer which he placed at his office workstation — Other doctor maintained that computer should be shared equally and kept at his secretary's workstation — Doctor K took computer home — Doctor K was eliminated from group practice and was told by hospital to vacate clinic — Hospital brought application for declaration that doctor was overholding tenant — Application dismissed — Doctor K was not overholding tenant and held three year lease — Evidence did not support conclusion that northern group by itself was tenant — Unlikely that doctor K would have relocated to clinic with month-to-month lease — Doctor K had three-year employment agreement with northern group and with ministry — Forgivable loan from hospital to doctor K for moving expenses was contingent upon three year's service.

Contracts --- Performance or breach — Terms — Conditions precedent — General

Minister of health formed agreement with northern group comprised of three doctors — Agreement specified group would rent space from Manitouwadge hospital for three years — One doctor quit and was replaced by defendant doctor K — Doctor K agreed to three year employment term — Draft of original agreement between northern group and minister replacing doctor

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L with Doctor K was not signed — Doctor K purchased computer which he placed at his office workstation — Other doctor maintained that computer should be shared equally and kept at his secretary's workstation — Doctor K took computer home — Doctor K was eliminated from group practice and was told by hospital to vacate clinic — Hospital brought application for declaration that doctor was overholding tenant — Application dismissed — Doctor K was not overholding tenant and held three year lease — Condition that doctor K remain part of northern group and have admitting privileges at hospital was essential term of lease agreement — Doctor K had not been officially removed from the group, and admitting privileges were under review — Doctor K would suffer substantial and irreparable harm if tenancy was revoked.

AAPLICATION by hospital that doctor was overholding tenant.

***Kozak J. (Ont. S.C.J.)*:**

Introduction

1 This is an inquiry pursuant to Sections 74 and 76 of the *Commercial Tenancies Act*, whereby the applicant hospital seeks a determination by this Court that the respondent doctor is an overholding monthly tenant who refuses to give up possession of the demised premises, in spite of a Notice to Quit and, accordingly, ask for the issuance of a Writ of Possession. The respondent takes the position that his occupation of the premises is based upon a term certain of three years and not month to month as alleged by the applicant, and that the said three year term has not expired.

2 The surrounding circumstances of this case are unique and require consideration of the following factors:

(i) A Northern Group Funding Plan from the Ministry of Health so as to redress the shortage of primary care and other related medical services in the Town of Manitouwadge, Ontario;

(ii) The formation of the Manitouwadge Physicians Group Practice to meet the requirements and needs of the said Funding Plan;

(iii) An agreement among the members of the Manitouwadge Physicians Group Practice; and

(iv) The involvement of the applicant hospital, which provided separate clinic facilities to house the group practice, as well as residential accommodation to the participating physicians.

Factual Background

3 Effective May 1, 1999 the Northern Group Funding Plan Agreement came into being as between the Minister of Health and Doctor W. A. Sutherland, Doctor G. M. Ducros and Doctor R. Larochelle. This was a three year agreement which was to remain in force from May 1, 1999 to April 30, 2002. This agreement replaced the Globally Funded Group Practice Agreement between the Minister of Health and Doctor W. A. Sutherland, Doctor G. M. Ducros and Doctor Ian Thompson, the effective date of which was April 1, 1997.

4 The Northern Group Funding Plan Agreement makes it most clear that the parties to the agreement are to be the Minister of Health and *the Group*. The group physicians in this agreement being Drs. Sutherland, Ducros and Larochelle. It was a condition of the agreement that the physicians who are funded through the Northern Group Funding Plan must establish a written *governance agreement* that includes arrangements for the remuneration of the group.

5 Drs. Sutherland, Ducros and Larochelle did in fact enter into the Manitouwadge Physicians Group Practice Agreement on April 20, 1999 to practice medicine as a group known as the Manitouwadge Group Practice, located in the Manitouwadge Medical Clinic, a facility owned by the Manitouwadge General Hospital. There is no need to go into great detail with respect to the terms and conditions contained in this agreement, however, some of the more pertinent terms are as follows:

(a) To qualify, all physicians must have admitting privileges at the Manitouwadge General Hospital.

(b) Weekly meetings are to take place each Thursday, during which time all financial, medical and *practice decisions* were to be discussed and voted upon, with the decision to be *unanimous*. In case of disagreement the item is to be presented to the Community Committee for their input and consideration.

(c) If a problem develops with a group or non-group physician re his continued employment, this will be presented initially to the group meeting and, if unresolved, will be presented to the community committee. If still unresolved, a senior physician referee (acceptable to the group and the Minister of Health) should make a final decision.

(d) The Manitouwadge Group Practice will practice as a group of three. The medical office will be rented from the landlord (*lease to be attached*). The rent will be paid *equally* by each physician in the group.

(e) The duration of the agreement was to be three years with a three month termination notice at termination, due to the difficulty of finding a replacement physician. It must be noted at this point that no lease was ever prepared as between the hospital and the group.

6 Doctor Larochelle made it known during the summer of 1999 that he no longer wished to practice as part of the group. This prompted Doctor Sutherland to place the advertisement as shown in Tab 28 of Exhibit #2 for the purpose of replacing Doctor Larochelle. The advertisement read as follows:

FP/GP required for Manitouwadge (3500 population) Northwestern Ontario. Salaried position at Twenty Seven Thousand ($27,000.00) a month in a N.G.F.P. group of three MD's. First class house and clinic supplied at minimal cost. Full service community with a new 20 bed hospital. Phone Dr. Bill Sutherland (807) 826-3360 Fax (807) 826-1215.

7 At the end of August 1999 Doctor Kudlak, who at the time was practicing in Kitchener, Ontario, saw the advertisement, contacted Doctor Sutherland and, after outlining his experience, a meeting in Manitouwadge was arranged.

8 Doctor Kudlak testified that he arrived in Manitouwadge on September 7, 1999 and was there for a period of 28 hours. He first of all met and had dinner with Doctors Sutherland, Ducros and Larochelle. The next day he met with Ms. Harris and indicated that he was prepared to move to Manitouwadge, but that he wanted a three year contract and was not agreeable to any 30 or 90 day commitment. He stated that there was no discussion with respect to the clinic during this meeting and, in particular, that there was no month to month relationship mentioned. On September 8, 1999, Doctor Kudlak completed an application for appointment to the medical staff (See Exhibit #2, Tab 2) and also attended a staff meeting, where again no discussion took place with respect to the clinic.

9 Doctor Kudlak stated that some three or four days later that he received a telephone call from Ms. Harris and Doctor Sutherland. His evidence was that he was offered a thirty day arrangement and then a ninety day arrangement, both of which he found to be unacceptable. He wanted a long term arrangement and stated that they then agreed upon a three year contract which included a completion bonus of $10,000.00 at the end of the third year. According to Doctor Kudlak, there was no discussion about clinic arrangements during this conversation.

10 Tab 19 of Exhibit #2 is an amending agreement dated October 1, 1999 as between the Minister of Health and Doctors Sutherland, Ducros and Kudlak. This was an agreement to amend the N.G.F.P. agreed dated May 1, 1999 so as to reflect the change in the parties and to permit certain additional permissible billings under the agreement. The amending agreement was prepared by the Ministry of Health and, in a letter dated November 19, 1999, two originals of the amending agreement were forwarded to the three doctors and the hospital at the *Manitouwadge General Hospital* for acceptance and return following execution. (See Tab 19, Exhibit #2) The said amending agreement was not signed and, according to Doctor Kudlak, this document was withheld from him by Doctor Sutherland.

11 Judith Harris, the C.E.O. of the Manitouwadge General Hospital testified on behalf of the hospital. She stated that she met Doctor Kudlak during the early part of September 1999, but was not at the dinner with Doctor Kudlak and the other three doctors from the clinic. Her meeting with Doctor Kudlak, the next day, touched upon what incentives the hospital had to offer

and, in this regard, she states that they discussed moving expenses, clinic space and housing. With respect to moving expenses (See Tab 5, Exhibit #2) Doctor Kudlak received a moving allowance of $4,500.00 as a forgivable loan based upon three years service in the community. Ms. Harris' evidence, as to the matter of clinic space, was somewhat more general than it was specific to Doctor Kudlak. To begin with, she stated that the clinic was transferred to the hospital by the community in 1996 and that the hospital continues to own the clinic. She stated that, as a matter of policy, the hospital never intended to keep physicians for a one year lease or longer and, in this case, agreed that the *leases* would be month to month at the rate of $750.00 a month. As to her discussion with Doctor Kudlak on September 8, 1999, she admits that there was no talk of a lease, but that monthly rent was discussed. As to the mater of a three year commitment instead of 30 or 90 day trial periods, Ms. Harris stated that the hospital was not involved in the matter since this was a group practice commitment.

12 It must also be noted that Doctor Kudlak was married with three school aged children and that he owned a home in Kitchener, which he would have to consider selling or renting should he decided to move to Manitouwadge to join the group practice.

13 Doctor Kudlak sold his home in Kitchener and moved to Manitouwadge on September 28, 1999 with his wife and family. In a letter dated September 28, 1999 from Ms. Harris, Doctor Kudlak was welcomed to the community and was provided with a list of his temporary and admitting privileges at the hospital, pending the granting of full time status following the approval of the Credentials Committee. On September 29, 1999, Doctor Kudlak signed Appendix A as a group physician, consenting to the terms of the Northern Group Funding plan. (See Tab 4, Exhibit #2). On October 1, 1999 Doctor Kudlak commenced practice with the Manitouwadge Group Practice as a group physician.

14 Matters appear to have proceeded without incident until on or about December 7, 1999 when a third more powerful computer was installed at the clinic. A dispute arose as to the location and ownership of the computer. Doctor Kudlak took the position that since he paid for the computer ($2,400.00) that it was his and should be located at his station. Doctor Sutherland's view was that the computer was to be shared equally and, since his secretary did the bulk of the billing, that it should remain at her station. Doctor Kudlak removed the computer with the patient files to his home (See Exhibit #2, Tab 8). Between December 10, 1999 and December 16, 1999 the computer was at the home of Doctor Kudlak with the result that O.H.I.P. billings were delayed.

15 On or about December 16, 1999, Doctor Kudlak's association with the group was terminated, pursuant to a letter dated December 16, 1999 from Doctor Sutherland. (See Exhibit #2, Tabs 8 and 9). As chief of staff Doctor Sutherland removed Doctor Kudlak from the on call schedule as of 12 noon December 16, 1999. The matter of redressing the dispute was left to Doctor Kudlak to pursue with the community committee. In a letter also dated December 16, 1999 to Ms. Harris, Doctor Sutherland requested that the hospital discontinue Doctor Kudlak's temporary privileges as soon as possible. (See Exhibit #2, Tab 10)

16 There being an apparent disregard by Doctor Kudlak to Doctor Sutherland's letter of December 16, 1999, Doctor Sutherland, in a letter dated January 6, 2000 to Doctor Kudlak, repeated the termination of Doctor Kudlak, with respect to the group practice. As to the dispute resolution provision in the agreement, it was acknowledged that the community committee was unable to function in this role because three of the members of the committee had conflicts of interest. A cheque in the amount of $2,400.00, payable to Doctor Kudlak, was enclosed to cover his contribution towards the purchase of the computer which had a total cost of $3,234.00.

17 On January 7, 2000, after receiving copies of Doctor Sutherland's correspondence dated December 16, 1999, and January 6, 2000, Ms. Harris terminated Doctor Kudlak's temporary privileges at the hospital and requested that he vacate the clinic and find alternate accommodations for his family. The basis put forward by Ms. Harris for having Doctor Kudlak vacate the clinic and the residential home was that Doctor Kudlak was no longer a member of the group practice and that his temporary privileges at the hospital had been terminated. No mention was made of a month to month tenancy.

18 On January 11, 2000, Ms. Harris delivered a notice to Doctor Kudlak which read as follows:

> Pursuant to Section 28 of the Commercial Tenancy Act, please accept my correspondence of January 7, 2000 as 30 days notice to vacate your premises.

19 Efforts by Doctor Kudlak to mediate the dispute were not successful in that the other two group physicians were simply unwilling to practice in association with him. (See Exhibit #2, Tabs 20 and 21)

20 Exhibit #1 is an agreed statement of facts filed by counsel for the parties. There is no need for me to repeat all of the agreed upon facts. It must be noted, however, that in Court File No. 00-0143 Doctor Kudlak commenced an action against Doctor Sutherland and Doctor Ducros, in which he sought an interlocutory injunction for re-instatement into the group until his status in the group is settled. On July 18, 2000, Mr. Justice John deP. Wright ordered that Doctor Kudlak be re-instated to the practice group as of August 1, 2000.

21 Doctor Kudlak's application for active staff privileges at the Manitouwadge General Hospital was considered by the Medical Advisory Committee and his application was denied. (See Exhibit #2, Tab 17) Doctor Kudlak has appealed his denial of privileges to the Public Hospitals Appeal Board. (See Exhibit #2, Tab 24) This appeal is still outstanding.

Position of the Parties

22 Counsel for the applicant hospital submits that the simple question in this inquiry is whether a monthly tenancy was established and whether a valid notice to quit was delivered by the hospital to Doctor Kudlak to terminate the said monthly tenancy. In the alternative, if it is found that a monthly tenancy was not established, but that instead a lease arrangement for a term certain of three years was agreed upon, then the tenancy was terminated because of the following conditional limitations:

(1) That Doctor Kudlak was no longer a member of the group, and

(2) That his hospital privileges had been terminated.

23 Counsel for Doctor Kudlak contends that the evidence is inconclusive as to whether it was *the Group* or the individual doctors that were the actual tenants of the clinic. If the group is the tenant then it is argued that the notice to quite is void and of no effect, and the application for a writ of possession would have to be dismissed. If, on the other hand, the group is not the tenant, then the issue becomes, what is the nature and term of Doctor Kudlak's tenancy, month to month or a term certain of three years from October 1, 1999 to September 30, 2000. Counsel for Doctor Kudlak argues that, in this case, where there are no signed leases as between the hospital and the individual doctors or between the hospital and the group, that the evidence is more consistent with a three year lease arrangement than it is with respect to a month to month tenancy.

Decision

24 The lease arrangement in this case is inextricably bound to the Northern Group Funding Plan and the Manitouwadge Group Practice Agreement. The purpose of the Funding Plan was to address a doctor shortage in the Town of Manitouwadge by providing a unique compensation package over a three year period which would encourage physicians to become engaged in a group practice and thereby provide their services both at the clinic and at the hospital. Similarly, the group practice agreement was for a period of three years and provided that the Manitouwadge Group Practice will practice as a group of three. It further provided that the medical office (i.e. the clinic) will be rented from the landlord (*lease to be attached*). No such lease was prepared. There was no evidence from Judith Harris on the matter, nor were Doctors Sutherland, Ducros or Larochelle called as witnesses so as to shed any light as to whether the lease arrangement at the clinic was with the group or with the individual doctors. Given the clear expression in the Funding Plan Agreement that the parties to the said agreement were the Minister of Health and the *Group*, one might be led to conclude that any lease agreement with the landlord hospital, with respect to the clinic, would have the group as the tenant. The reason for drawing such a conclusion is that the Funding Plan Agreement calls for a group, as opposed to an individual practice. The evidence on this point was found to be so wanting that this Court was simply unable to draw an inference that the Group was the actual tenant.

25 The law is clear that if the lease created by the agreement is a fixed term lease, it must have a certain beginning and a certain end. In *Trust & Loan Co. v. Lawrason* (1881), 10 S.C.R. 679 (S.C.C.), Stong J stated at p. 706:

> ...no principle of the law of property is better established than that which makes it indispensable to the creation of a term, than its duration should be prefixed and certain from the beginning and not fluctuating or uncertain according as certain contingencies may or may not happen.

26 The same principle was enunciated in *Lace v. Chantler*, [1944] 1 All E.R. 305 (Eng. C.A.) where the Court of Appeal held that:

> A term created by a leasehold tenancy agreement must be a term which is either expressed with certainty and specifically or is expressed by reference to something which can at the time when the lease takes effect, be looked to as a certain ascertainment of what the term is meant to be.

27 The law in Canada is no different than English law. See *Post v. Langell*, [1925] 4 D.L.R. 90 (Ontario P.C.); *Casson v. Handisyde* (1974), 3 O.R. (2d) 471 (Ont. Co. Ct.); *Shell Canada Ltd. v. Shafie* (1989), 93 N.S.R. (2d) 115 (N.S. T.D.). In describing a Tenancy for a Term Certain, Honsberger Law of Real Property, 2nd Ed., Vol. 1 at page 232, had this to say:

> The usual form of tenancy is for a term of years or a term certain. Such a tenancy must be created by express contract and its commencement and duration must be indicated with certainty either originally or in such a way as to be ascertainable afterwards with certainty.

In *Post v. Langell* (*supra*) the Court effected the intent of the parties and interpreted the agreement as providing for a definite term with power to terminate in certain events. It is clear that if the maximum duration of the term is fixed, the lease may be subject to determination within the period and not thereby be of uncertain duration.

28 In cases where there is no written lease and where the parties are at variance as to the type of tenancy that was agreed upon, the onus is on each party to establish, on a balance of probabilities, their respective positions concerning the term of the tenancy. In this regard the Court must look at the surrounding circumstances, including the actions of the parties, to determine what the parties intended their contractual relationship to be. See *South Shore Venture Capital Ltd. v. Haas* (1994), 131 N.S.R. (2d) 9 (N.S. S.C.); *Jennings v. Magee* (November 25, 1988), Doc. Middlesex 6889 (Ont. Dist. Ct.); *Williamson v. Kamloops Pregnancy Counselling Services Society* (1991), 20 R.P.R. (2d) 247 (B.C. S.C.); *Kissick v. Seam Enterprises Ltd.* (November 27, 1991), Doc. Rossland 01243 (B.C. S.C.).

29 The evidence of Judith Harris and Doctor Kudlak is conflicting, to say the least, with Ms. Harris stating that she advised Doctor Kudlak that he would be a monthly tenant and Doctor Kudlak testifying that they had agreed upon a three year tenancy agreement.

30 It is trite law that the trier of fact may accept such evidence as he or she finds convincing, cogent and compelling. In assessing the credibility of interested witnesses, in cases of conflicting evidence, this Court is guided by the comments of Mr. Justice O'Halloran of the British Columbia Court of Appeal in the case of *Faryna v. Chorny* (1951), 4 W.W.R. (N.S.) 171 (B.C. C.A.), wherein it was stated:

> ...In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

31 The surrounding circumstances make Doctor Kudlak's version of the events more probable than that of Judith Harris. To begin with, it seems improbable that Doctor Kudlak would give up a private practice in Southern Ontario, sell his home in Kitchener, Ontario and move his wife and three school age children to Manitouwadge, Ontario with no more security of tenure than a month to month tenancy in the Group practice. Such a notion is totally inconsistent with the three year terms of the Northern Funding Plan Agreement, the Amending Agreement and the Physicians Group Practice Agreement. I found Doctor Kudlak to be a most credible witness, and I accept his evidence that he rejected a 30 or 90 day trial period when contacted by Doctor Sutherland and Ms. Harris. It is inconceivable that he would refuse such a short term commitment to join the Group

and still accept a month to month tenancy at the clinic. The evidence is clear that he reached a three year agreement with both the Group and the Ministry of Health. In addition, Doctor Kudlak received a moving or relocation cheque in the amount of $4,500.00 from the hospital, as a forgivable loan, based upon three years service in the community. (See Exhibit #2, Tab 5) Other than the payment of rent, at the rate of $750.00 per month, which is provided for in the Group Practice Agreement, I also accept the evidence of Doctor Kudlak that there were no discussions as between himself and Judith Harris with respect to any monthly lease arrangements prior to his commencement of work at the clinic on October 1, 1999.

32 I found the testimony of Judith Harris, with respect to the matter of tenancy at the clinic, to be long on speculative argument and short on material facts. Aside from her assertion that she informed Doctor Kudlak that his tenancy at the clinic was to be month to month, there is no other evidence, either documentary, viva voce, or affidavit, to support such a tenancy. The hospital did not see fit to prepare a written lease as required by the group agreement. Nor did the hospital provide evidence from Doctors Sutherland, Ducros and Larochelle, who would be persons that would have personal knowledge as to the contested facts of the nature of the tenancy at the clinic. To me, it appeared as though Ms. Harris reconstructed the tenancy agreement with Doctor Kudlak to suit the hospital's purposes, after it complied with Doctor Sutherland's somewhat hasty request to terminate Doctor Kudlak's hospital privileges, after Doctor Sutherland decided to terminate Doctor Kudlak as a group physician without going through the dispute resolution mechanism in the group agreement. It is truly unfortunate that a dispute as innocuous as the location of a computer, was not referred to mediation for input before a termination decision was reached with the costly and disruptive results that have followed.

33 Based upon all of the evidence, this Court interprets the oral discussions that took place between the hospital and Doctor Kudlak, to amount to a contractual relationship for a three year term certain at the clinic, to coincide with the terms of the Funding Plan Agreement and the Amending Agreement. It is clear to this Court that the tenancy agreed upon prior to October 1, 1999 did not provide for a month to month tenancy. The payment of rent on a monthly basis does not of itself constitute a monthly tenancy.

34 Pursuant to the funding arrangements with the Ministry of Health, Doctor Kudlak was only able to take advantage of the benefits of the plan so long as he remained a member of the group and, so long as he was able to perform the services set out in the funding plan, which included certain specific services at the hospital. Counsel for the hospital takes the position that these two conditions are conditional limitations to the oral lease agreed upon. Counsel for Doctor Kudlak argues that these conditions are essential to the Northern Group Funding Plan Agreement and to the Manitouwadge Group Practice Agreement, but that there is no evidence that they formed the basis of any tenancy agreement between Doctor Kudlak and the hospital. As indicated earlier in these reasons, the lease arrangement in this case is difficult to disentangle from the Funding Plan Agreement and the Group Practice Agreement. Accordingly, the conditions that Doctor Kudlak remain a member of the group and that he retain hospital privileges at the Manitouwadge General Hospital are essential terms that form part of the oral lease agreement.

35 By virtue of the Order of Wright J in action No. 00-0143, Doctor Kudlak was re-instated as a member of the Group Practice as at August 1, 2000 and was to continue as a group member until an agreement between the parties, a decision of an arbitrator under the agreement or further Order of this Court. Doctor Kudlak's membership in the group continues.

36 As to the matter of his hospital privileges, an appeal of the loss or denial of the privileges is pending and the matter is still outstanding. To determine the lease as being terminated at this stage, because of the status of Doctor Kudlak's hospital privileges would, in my view, be untimely. In the alternative, should the conditional limitation be sufficient to terminate the lease pending appeal, then this Court finds that Doctor Kudlak is entitled to relief from forfeiture pursuant to Section 20 of the *Commercial Tenancies Act* and Section 98 of the *Courts of Justice Act*. The evidence in this case indicates that if Doctor Kudlak is removed from the clinic at this stage, that he would suffer substantial and irreparable prejudice and harm to his reputation and finances. Doctor Kudlak meets the criteria for the granting of relief from forfeiture, and such relief is hereby granted in the alternative. (See *Dominelli Service Stations Ltd. v. Petro Canada Inc.* (August 7, 1992), Doc. CA C12027 (Ont. C.A.); *Liscumb v. Provenzano Estate* (1985), 51 O.R. (2d) 129 (Ont. H.C.).

37 On a balance of probabilities, I find that the applicant hospital is not entitled to a Writ of Possession and the herein application is dismissed.

38 Order to issue accordingly. Counsel may speak to the matter of costs.

Application dismissed.

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